

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

CHARLES JONES, as Personal Representative
of the Estate of Wade Jones, Deceased,

Case No: 1:20-cv-36

Plaintiff,
v.

Hon. Judge Hala Y. Jarbou
Magistrate Judge Sally J. Berens

COUNTY OF KENT et al.

Defendants.

BUCKFIRE LAW FIRM
Jennifer G. Damico (P51403)
Sarah L. Gorski (P82899)
Attorneys for Plaintiff
29000 Inkster Rd., Ste. 150
Southfield, MI 48034
(248) 569-4646
jennifer@buckfirelaw.com
sarah@buckfirelaw.com

CHAPMAN LAW GROUP
Ronald W. Chapman Sr., M.P.A.,
LL.M. (P37603)
Devlin Scarber (P64532)
*Attorneys for Corizon Health, Inc.; Teri Byrne, R.N.;
Dan Card, L.P.N.; Lynne Fielstra, L.P.N.; Melissa
Furnace, R.N.; Chad Richard Goetterman, R.N.;
James August Mollo, L.P.N.; Joanne Sherwood, N.P.;
and Janice Steimel, L.P.N.*
1441 West Long Lake Rd., Suite 310
Troy, MI 48098
(248) 644-6326
rchapman@chapmanlawgroup.com
dscarber@chapmanlawgroup.com

DEFENDANTS EMERGENCY MOTION TO STAY PROCEEDINGS 90 DAYS

NOW COME the Defendants TERI BYRNE, R.N.; DAN CARD, L.P.N.; LYNNE FIELSTRA, L.P.N.; MELISSA FURNACE, R.N.; CHAD RICHARD GOETTERMAN, R.N.; JAMES AUGUST MOLLO, L.P.N.; JOANNE SHERWOOD, N.P.; and JANICE STEIMEL, L.P.N. (“Defendants”), by and through their attorneys, CHAPMAN LAW GROUP., and for their Emergency Motion to Stay Proceedings 90 days states as follows:

1. This is a lawsuit brought pursuant to pursuant to 42 U.S.C. §1983, alleging violations of the Eighth Amendments. (**PageID.1-58**).

2. From the onset of this lawsuit, Defendants, the undersigned counsel, as well as Plaintiff, have been led to believe that the instant claim was covered by a professional liability insurance policy issued to Defendants by Tehum Care Services, Inc., d/b/a Corizon Health, Inc.

3. On February 16, 2023, the undersigned Counsel became aware of the attached Bankruptcy filing by Tehum Care Services, Inc. on or about February 13, 2023. (**Exhibit A**)

4. On February 17, 2023, the undersigned Counsel became aware of the attached Order Granting Complex Case Treatment. (**PageID.8622**).

5. The attached bankruptcy filings cast serious doubt on the continued viability of Corizon to act as Defendants' professional liability carrier but Corizon has never repudiated coverage for the instant claim or announced its inability to satisfy a judgment or pay indemnity up to the level of its policy limits.

6. At the very least, these filings would require the involvement of the Bankruptcy Trustee in any decision-making process regarding insurance coverage for the claims that for the basis of this lawsuit and neither Defendants nor their undersigned counsel have had any contact with the Bankruptcy Trustee if one has yet been appointed.

7. Accordingly, Defendants do not know whether professional liability insurance coverage exists in this matter and, moreover, who is actually operating Tehum Care Services, Inc. and making business decisions that may directly affect its insureds.

8. Further, the uncertainty of the professional liability coverage creates a potential conflict of interest in the undersigned counsel in continuing to represent Defendants in this matter as the undersigned counsel was retained pursuant to the professional liability insurance coverage. See Michigan Rules of Professional Conduct R. 1.7, last updated 9/1/2022.

9. Accordingly, the undersigned Counsel is in the process of retaining legal ethics experts to advise on the potential conflict of interest and whether wholesale withdrawal as counsel is ethically necessary.

10. The District Court has the power to stay proceeding as part of its inherent power to “control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Esperson v. Trugreen Ltd. P’ship*, 2010 U.S. Dist. LEXIS 64637 *4 (W.D. TN June 29, 2010).

11. When ruling on a motion to say the Court considers three factors “(1) potential prejudice to the non- moving party; (2) hardship and inequity to the moving party if the action is not **stayed**; and (3) the judicial resources that would be saved by avoiding duplicative litigation if the cases are in fact consolidated.” *Sierra Club v. Korleski*, 2010 U.S. Dist. LEXIS 63363 *6 (S.D. OH June 8, 2010) (citing *Martin v. Heideman*, 106 F.3d 1308, 1311 (6th Cir. 1997)).

12. Fed. R. Civ. P. 16(c)(2)(L) allows for the Court to “adopt special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual problems.”

13. By way of example, on Monday February 27, 2023, Magistrate Judge Anthony Patti entered the order attached as **Exhibit B**.

14. Given the events that apparently occurred on or about February 13, 2023, Defendants are requesting a stay of proceedings in an effort to allow Defendants to obtain personal counsel to determine whether or not their insurance carrier is viable or whether Defendants will be required to proceed in this matter without insurance coverage.

15. If no insurance coverage exists, Defendants should be given an opportunity to choose new defense counsel or to individually retain instant counsel to litigate this matter on his behalf.

16. Additionally, even if Corizon Health, Inc. remains a viable insurance carrier, the Bankruptcy Trustee's participation in this matter will be required and a period of time will be necessary to transmit claim information so that he may actively participate with appropriate knowledge of this claim.

17. On March 2, 2023, the undersigned counsel contacted opposing counsel to seek concurrence for the relief requested. Counsel for Plaintiff denied the relief sought.

WHEREFORE, for the reasons set forth above, Defendants respectfully request that this Honorable Court grant their Motion to Stay and enter an order staying proceedings in this matter for ninety (90) days.

Respectfully submitted,
CHAPMAN LAW GROUP

Dated: March 3, 2023

/s/Devlin Scarber
Ronald W. Chapman Sr., M.P.A., LL.M. (P37603)
Devlin K. Scarber (P64532)
Attorneys for Defendants
1441 W. Long Lake Rd., Suite 310
Troy, MI 48098
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**BRIEF IN SUPPORT OF DEFENDANTS EMERGENCY MOTION TO STAY
PROCEEDINGS 90 DAYS**

Defendants TERI BYRNE, R.N.; DAN CARD, L.P.N.; LYNNE FIELSTRA, L.P.N.;
MELISSA FURNACE, R.N.; CHAD RICHARD GOETTERMAN, R.N.; JAMES AUGUST
MOLLO, L.P.N.; JOANNE SHERWOOD, N.P.; and JANICE STEIMEL, L.P.N. (“Defendants”),
relies on and incorporates the facts and law outlined in the preceding Motion as if fully set forth
herein, and further relies on Fed. R. Civ. P. 16(c)(2)(L) and the sound discretion of this Honorable
Court in request a ninety (90) day stay of the above captioned proceedings. *See Esperson v.*

Trugreen Ltd. P'ship, 2010 U.S. Dist. LEXIS 64637 *4 (W.D. TN June 29, 2010); *Sierra Club v. Korleski*, 2010 U.S. Dist. LEXIS 63363 *6 (S.D. OH June 8, 2010).

WHEREFORE, for the reasons set forth above, Defendants, respectfully request that this Honorable Court grant their Motion to Stay and enter an order staying proceedings in this matter for ninety (90) days.

Respectfully submitted,
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Dated: March 3, 2023

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PROOF OF SERVICE

I hereby certify that on March 3, 2023, I presented the foregoing paper to the Clerk of the Court for filing and uploading to the ECF system, which will send notification of such filing to the attorneys of record listed herein and I hereby certify that I have mailed by U.S. Postal Service the document to the involved non participants.

/s/Devlin Scarber
Devlin K. Scarber (P64532)